
(1995) 10 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3806 of 1991

Yeshwant Gangaram Pandav and Others

APPELLANT

Vs

Asea Brown Bowery Ltd. and Others

RESPONDENT

Date of Decision : 31-10-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2)

Citation : (1999) 3 LLJ 1333

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—By this Writ Petition, substantially under Article 227 of the Constitution of India, the Awards of the Labour Court, Nasik, dated 31st December, 1987 and 4th January, 1991 made in Reference (IDA) No. 10 of 1984 under the provisions of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") are impugned.

2. The petitioners are ex-employees of the 1st respondent which owns and runs a factory at Pune Manufacturing Engineering Goods.

3. On 25th March 1982 the workmen working in the industrial department of the 1st Respondent resorted to a strike which was continued from 8.45 a.m. on 26th March 1982 till 21st August 1982 on which day it was withdrawn. The said strike was held to be an illegal strike by an order of the Labour Court, Nasik, dated 30th April, 1982 made in Reference (ULP) No. 5 of 1982 u/s 25(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. 14 workmen of the 1st Respondent were served with identical charge-sheets on 25th May, 1982 alleging that they had instigated an illegal strike with effect from 26th March 1982 and despite the said strike having been declared to be illegal by the Labour Court, Nasik on 30th April, 1982, they had not withdrawn the illegal strike as required under law and that they had actively participated in and were acting in furtherance of the illegal strike till the date of the service of the charge-sheet. Misconducts under Model Standing

Orders 24-A, 24-B, 24-K and 24-L were alleged against the concerned workmen who were called upon to attend the inquiry. Out of the said 14 workmen, we are only concerned with the cases of the 3 Writ Petitioners before this Court, as the cases of the other workmen were settled under a settlement between the 1st Respondent and the Union representing the workmen of the 1st Respondent factory.

4. The petitioners were called for inquiry on 30th May 1982 at VIP Hotel, Nasik. The petitioners attended the inquiry, but applied for time on the ground that they needed to consult their lawyer from Bombay to defend them. They also applied for a Marathi translation of the charge-sheet dated 25th May, 1982. V. D. Shewade, Manager (Administration), who appeared in the inquiry on behalf of the 1st Respondent, undertook to furnish Marathi translation of the chargesheet on 31st May, 1982 at noon at the gate of the factory and the petitioners agreed to collect it at that time and place. The inquiry was adjourned to 12th June, 1982. On 12th June, 1982, the petitioners appeared before the Inquiry Officer represented by one P. S. Sawant, Vice President, Association of Engineering Workers. An application was filed on behalf of the delinquent employees for supply of copies of certain documents. The Manager (P&A), V. D. Shewade, agreed to supply the said documents on 17th June 1982 at 12 noon at the gate of the factory and the delinquent employees agreed to receive the copies at that time and place. Since the delinquent employees had failed to collect the copy of the Marathi translation of the charge-sheet, it was placed on record by the representative of the 1st Respondent on 12th June 1982. The inquiry was thereafter adjourned to 22nd June 1982. It appears that, when the inquiry was being held on 12th June 1982 at Siddharth Hotel, Nasik, some of the delinquent employees had an altercation with the staff of the said hotel resulting in the management of the Siddharth Hotel requesting the 1st respondent and the Inquiry Officer to shift the venue of the inquiry. Consequently, the venue was shifted to Hotel Padma, Near Central Bus Station, Nasik City. Due notice of the shifting of the venue was given to all the delinquent employees by notices published in the local Marathi Newspapers, "Gaokari" and "Deshdoot".

5. On 22nd June 1982, the Petitioners and other workmen, who were required to attend the inquiry at Hotel Padma after due notice had been given, did not come to the venue of the inquiry, but chose instead to go at the gate of the factory where they presented a letter dated 22nd June 1982, though the said letter was addressed to the Inquiry Officer. In the said letter, the workmen stated as :

"The company has entrusted to you the inquiry into the charge-sheets of all the undersigned workmen. The company has been frequently changing the venue of the inquiry from one hotel to another. The company has not paid to us till today the expenses to attend the inquiry or expenses of lunch because the inquiry has been kept at a place other than and distant from the place of the work, nor has the company stated till today that it is going to pay the said amounts. Hence, until the company gives us the arrears and the current expenses for

transportation and lunch, either by money orders at our addresses or by calling us to the date of the factory, we shall not be able to participate in your inquiry...."

Since neither the the petitioners nor the representative of the petitioners P. S. Sawant turned up at the inquiry on 22nd June 1982, the Inquiry Officer made an order that the inquiries be conducted ex parte, after waiting for about an hour and more. He adjourned the inquiry to 23rd June 1982. On 23rd June 1982, evidence was recorded at the inquiry ex parte and statements of one witness, V. D. Shewade, was recorded. The inquiry was thereafter adjourned to 9th July 1982, on which date, the inquiry Officer recorded his finding and closed the inquiry. It may be mentioned here that, neither on 23rd June 1982 nor on 9th July 1982, were any of the petitioners or their defence representative present at the inquiry. The inquiry Officer by his report dated 9th July 1982, after appreciation of evidence at inquiry, found the charges alleged against the petitioners proved and held them guilty of misconducts alleged against them. Consequently, by orders of dismissal dated 20th July 1982, the writ petitioners were dismissed from service.

6. The writ petitioners raised an industrial Dispute for reinstatement in service with full back wages and continuity of service which came to be processed under the Act and resulted in Reference (IDA) No. 10 of 1984 being made to the Labour Court at Nasik. The Labour Court, in the first instance, tried the preliminary issue as to legality and validity of the departmental inquiry and, by its Award dated 31st December, 1987, held that the domestic inquiry held against the petitioners was fair, proper and legal. By the final award dated 4th January 1991, the Labour Court, Nasik, held that the findings recorded by the inquiry Officer in the domestic inquiry could not be dubbed as perverse; that the workmen had failed to prove that the termination orders passed by the employer were illegal, unjust and improper and that, on the contrary, the 1st Respondent-Company had proved that the dismissal of the workmen was legal, fair and proper. Though the Labour Court was of the view that the workmen were not entitled to any relief, taking into consideration the fact that, by a settlement between the Union and itself the 1st Respondent had agreed to pay 75% of the last drawn wages during the pendency of the dispute, and the fact that the 1st Respondent had voluntarily offered to pay compensation to the extent of Rs. 50,000/- exclusive of other legal dues to each of the petitioner workmen, the Labour Court directed that, though the petitioner workmen were not entitled to any relief as demanded, each of them should be paid Rs. 50,000/- in addition to all other legal dues. Being aggrieved by the aforesaid order, the Petitioner-workmen are before this Court by the present writ petition.

7. Certain collateral events needs to be recounted here. After the heat had dissipated, the 1st Respondent and the Association of Engineering Workers entered into a Settlement dated 21st August 1982 under which it was agreed that, 10 workmen, including N. S. Suryavanshi and one R. N. Bhavsar, would be allowed to resume work. It was further agreed thereunder that the cases of four

workman, Y. G. Pandav, N. G. Bagul, A. D. Patil (present Writ Petitioners) and one R. M. Sonavane would be referred to the Industrial Tribunal/Labour Court u/s 10(2) of the Act and further that, till the decision of the Industrial Tribunal/Labour Court the said workmen would be paid 75% of their last drawn monthly wages.

8. On 24th November 1982, the 1st Respondent and the Association of Engineering Workers, applied in Form I read with Rule 3 of the Bombay Industrial Disputes Rules, 1957, to the appropriate Government for referring the disputes of the aforesaid four workmen for adjudication. In the annexure thereto, to was stated in paragraph (e), inter alia, as under :

"(e) Efforts made by the parties themselves to resolve the dispute : In beginning, 14 workers were discharged on charges of instigation of illegal strike, violence etc. Thereafter prolonged meetings were held between the Company and Dr. Datta Samant, as a result of which, it was decided to take back 10 workers, as per the terms of Settlement dated 21st August 1982. However, the nature of misconduct of the workers referred above, being of a serious nature, it was decided to refer their individual cases u/s 10(2) of the Industrial Disputes Act, hence this reference".

9. Mr. Colin Gonsalves, learned Advocate for the petitioners, assailed the two Awards of the Labour Court on the following grounds :-

(1) The Labour Court erred in holding that the inquiry conducted ex parte against the petitioners was not violative of the principles of natural justice;

(2) That there was breach of principles of natural justice as the 1st Respondent had failed to supply material documents on which the charges were based;

(3) The inquiry was violative of principles of natural justice as subsistence allowance was not paid to the charge-sheeted workmen during the period of the inquiry;

(4) The charge of instigation was vague and bereft of material particulars. Consequently, the workmen were prejudiced in defending themselves against the charge.

(5) That there was discrimination in punishment in as much as some of the other workmen, equally guilty of the same misconducts, were reinstate, while the petitioners were not.

10. Turning to the first contention, I am of the view that the said contention has been rightly rejected by the Labour Court. It is not in dispute that when the inquiry was adjourned on 12th June 1982 to 22nd June 1982, the petitioners were made aware of the adjourned date. Though on 12th June 1982, at the time of adjournment, it was assumed that the venue of the inquiry would continue to be Siddharth Hotel, Nasik, because of the quarrel by the delinquent workmen with the staff of the management of Siddharth Hotel and the decision of the

management of the said hotel not to permit the inquiry, the venue had to be shifted to Hotel Padma. It is not disputed that due notices in this regard were publicly given in the local Marathi Newspapers, "Deshdoot" and "Gaokari", much in advance of the adjourned date of the inquiry, i.e., 22nd June 1982. The only explanation given for the failure of the petitions to remain present at the time and place of the inquiry on 22nd June 1982 is that they had gone to the factory gate to present a Memorandum. To say the least, the argument is jejune. The Memorandum is addressed to the inquiry Officer; the workmen knew that the inquiry Officer would be available on 22nd June 1982 at Hotel Padma where the inquiry was scheduled. Whatever their grievances, they could have been presented to the Inquiry Officer at the time and place of the inquiry on 22nd June 1982. The explanation that they had to go to factory gate for presenting the memorandum at the factory gate, has no merit and does not appeal. The Labour Court rightly rejected this explanation.

11. Mr. Gonsalves urged that the workmen at no point of time had stated that they would not participate in the inquiry and that their absence on a particular occasion from the inquiry should not have resulted in the inquiry being held ex parte. He vehemently urged that, in all probability, the contents of the Memorandum dated 22nd June 1982 presented at the factory gate must have been made known to the inquiry Officer and, therefore, the inquiry Officer was bound to adjourn the inquiry until a decision was taken on the issue raised in the said Memorandum. In my opinion, this contention is without substance. The only issue raised in the Memorandum dated 22nd June, 1982, though addressed to the inquiry Officer and served at the factory gate, was that the workmen were unable to participate in the inquiry unless their demands for (a) transportation charges for attending the inquiry and (b) lunch expenses for attending the inquiry were made available to them. Mr. Gonsalves has not been able to show as to under what provision of law or under any Rules, Regulations, Employment Contract or Standing Orders, or otherwise, the 1st Respondent was bound to concede these demands in order to enable the workmen to participate in the inquiry. In my view, the workmen could not make the conceding of the said demands a condition precedent to attend the inquiry and, conversely, if the workmen refused to attend the inquiry by making a non-issue a condition precedent, they must take the consequences. Even though the Inquiry Officer decided on 22nd June 1982 to hold the inquiry ex parte on the next date and conducted the inquiry ex parte on 23rd June 1982, the findings were given only on 9th July 1982. At no point of time, during this entire period, was there any approach by the Petitioners or their representative for an opportunity to participate in the inquiry. This conduct on their part totally belies the contention of Mr. Gonsalves that the workmen were keen to participate in the inquiry. In these circumstances, I am of the view that the Inquiry Officer was perfectly justified in holding the inquiry ex parte. There was no breach of the principles of natural justice. The finding of the Labour Court on this issue is correct and needs no interference.

12. The second contention of Mr. Gonsalves is that the inquiry was vitiated as material documents were not supplied. The facts on record show that on 30-5-1982 a Marathi translation was demanded. Shewade, Administrative Manager, agreed to supply it on 31st May, 1982 at noon at the factory gate. The petitioners and other delinquent workmen failed to turn up at the factory gate and collect the same. Similarly, the documents which were demanded during the course of the enquiry on 12th June, 1982 were to be supplied at the factory gate. Shewade had once again agreed to supply copies on 17th June, 1982 at noon at the factory gate. The workmen failed to turn up at the agreed place and time collect the same. As a consequences, the documents were tendered before the Inquiry Officer on 22nd June 1982 during the course of the inquiry and taken on record. If the workmen had participated in the inquiry and remained present on 22nd June 1982, they would have certainly received the copies of the demanded documents. It is their failure to participate in the inquiry from 22nd June 1982 which resulted in non-supply of the documents to them. In these circumstances, I find no substance in the contention that the inquiry is vitiated for this reason. The Labour Court's finding on this issue is unassailable.

13. Mr. Gonsalves then urged that the 1st Respondent employer had failed to make payment of subsistence allowance during the period of the inquiry and, therefore, the workmen could not have been compelled to attend the inquiry. This, in his submission, amounts to breach of the principles of natural justice. Even after scanning the entire record with the able assistance of Mr. Gonsalves, I find no material on record to support this contention. Mr. Gonsalves, despite anxious search, was able to pin-point only the letter dated 22nd June 1982 as supporting his contention. I have already reproduced the material portion of this letter. There is not even a whisper therein about the subsistence allowance. The only demands raised in this letter were with regard to transportation charges to attend the inquiry and also for payment of lunch expenses of attend the inquiry because the inquiry was being held at a venue other than the factory premises. In the evidence of the 1st Petitioner Yeshwant G. Pandav, who was examined before the Labour Court, there is not a word said about the failure of the 1st Respondent to pay subsistence allowance. Though Pandav was at pains to explain why he could not attend the inquiry, he does not anywhere makes a grievance that the failure of the 1st Respondent Company to pay subsistence allowance was the cause which prevented him from attending the inquiry or justified his not attending the inquiry scheduled on 22nd June 1982. On the other hand, Pandav admitted in cross-examination that he was paid the subsistence allowance till the date of discharge and that the workmen had not made any complaint to the Inquiry Officer about not having received subsistence allowance from the company. He also admitted that actually the distance between the venue of the inquiry and his residence was shorter than the distance between his residence and the factory gate. In the absence of any material particulars to buttress the contention, it is not possible to accept this contention in vacuo. No such case was ever made out on the record and, therefore, it cannot be raised at this stage

before this Court.

14. Mr. Gonsalves then contends that the charges levelled against the Petitioners in the charge-sheet were vague. He has taken me through the contents of the charge-sheet annexed to the Writ Petition at page 28. The charge-sheet in terms states that the delinquent workman had instigated an illegal strike with effect from 26th March 1982; that the said strike had been declared illegal by the Labour Court, Nasik on 30th April 1982; that the delinquent workmen had not withdrawn the said illegal strike as provided under the law and finally that the illegal strike had been continued by him and actively participated in and that the delinquent workman was acting in furtherance thereof till the date of charge-sheet. In my opinion, the charges are sufficiently clear. In any event, a perusal of the reply to the charge-sheet given by the 1st Petitioner (page 36 to the Writ Petition) does not indicate that the 1st Petitioner was in any way prejudiced or handicapped in replying to the charges on the ground of vagueness or inability to comprehend the charges. On the other hand, his reply to the charge-sheet is categorical and shows that he refuted the charge with all the emphasis at his command and imputed ulterior motives to the company. The contention of Mr. Gonsalves must, therefore, fail. I am not satisfied that there was any vagueness in the charge-sheet so as to cause material prejudice to the defence of the charge-sheeted workmen.

15. Finally, Mr. Gonsalves urged that there was discrimination in imposing punishment. He points out that 14 workmen who were equally guilty of misconducts of participation in and instigation of illegal strike were charge-sheeted simultaneously by the 1st Respondent-Company, but ultimately only the 3 Writ Petitioners and one R. M. Sonavane, were discriminated against as they were not taken back into employment. This amounts to discrimination in the submission of the learned Counsel. Mr. Gonsalves also urged that the evidence on record shows that Y. G. Pandav and J. S. Suryavanshi were present at the gate and directing and instigating the strike and R. N. Bhavsar was instigating the strike inside the factory premises. He pointed out that the rest of the workmen, including J. S. Suryavanshi and R. N. Bhavsar, have been reinstated by the 1st Respondent. This, according to Mr. Gonsalves, amounts to unfair discrimination against the Writ Petitioners. The contention is not well founded. Though it is true that 14 workmen were charge-sheeted for identical misconducts, it was only because of the settlement dated 21st August, 1982 signed between the 1st Respondent company and the President of the Association of Engineering Works, (the Union of which the 3 Writ Petitioners were members at the material time) that the 10 workmen including J. S. Suryavanshi and R. N. Bhavsar were reinstated. Under this settlement it was agreed that the case of Y. G. Pandav, N. G. Bagul, A. D. Patil and R. M. Sonavane would be referred for adjudication of the Industrial Tribunal/Labour Court u/s 10(2) of the Act and that until such adjudication they would be paid 75% of their last drawn wages. The discrimination, if any, is the result of the said settlement. Mr. Gonsalves did not dispute that the petitioners through their Union were parties to

this collective agreement between the workmen and the employer. If this be so, it hardly lies in the mouth of the Petitioners-workmen now to complain that a situation, consented to and brought about by them consciously under the Settlement, amounts to discrimination. The argument has no substance and needs to be rejected.

16. Mr. Gonsalves cited the judgment of this Court (to which I was a party) in *Miraj Taluka Girni Kamgar Sangh v. The Manager, Shree Gajanan Weaving Mills, Sangli & Ors.* 1991 2 CLR 714, in support of his contention that vagueness in the charge-sheet violates inquiry. Undoubtedly, this judgment holds that vagueness in the particulars of the charge would be a violation of the principles of natural justice. However, in the case of the Writ Petitioners, I am not satisfied that the charge-sheet was vague for reasons I have already adumbrated.

17. Mr. Gonsalves then relied on the judgment of the Supreme Court in *Sengara Singh and Others Vs. State of Punjab and Others*, , and the judgment of this Court in *Deepak Laxman Sarnobat v. Union of India & Ors.* 1994 2 CLR 790 as supporting his plea of discrimination. Both to these cases were where employees, equally guilty of the same misconduct, were subjected to discriminatory punishment by the unilateral action of the employer - The State of Punjab in the first case and the Union of India in the second case. Neither was a situation where the so called discriminatory treatment sprang out of a settlement or agreement between the collective body of the agitating workmen and the employer. I am, therefore, of the view that neither authority is of held in advancing the case of the Writ Petitioners.

18. In the result, considering the facts and circumstances of the present case, I am satisfied that the learned Judge of the Labour Court was justified in holding that the Petitioner workmen were not entitled to any relief. The workmen have been rendered more than adequate justice. All throughout they were paid 75% of their last drawn wages and finally, even after denying them all reliefs, the Learned Judge of the Labour Court, relying upon a concession made by the 1st Respondent, has directed payment of a compensation of Rs. 50,000/- to each of the Writ Petitioners in addition to other legal dues. In my view, the ends of justice have been more than adequately met.

19. In the result, I find no merit in the Writ Petition which deserves to be and is hereby dismissed. Rule discharged. No order as to costs.

20. Issuance of certified copy of this judgment is expedited.